

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JENNIFER STRANGE, MAGEN  
MORRIS, on behalf of themselves and all  
other similarly situated,

Plaintiff,

v.

LES SCHWAB TIRE CENTERS OF  
OREGON, INC., et al.

Defendants.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

LES SCHWAB TIRE CENTERS OF  
WASHINGTON, INC., LES SCHWAB  
WAREHOUSE CENTER, INC., LES  
SCHWAB TIRE CENTERS OF BOISE,  
INC., LES SCHWAB TIRE CENTERS OF  
CALIFORNIA, INC., LES SCHWAB  
TIRE CENTERS OF IDAHO, INC., LES  
SCHWAB TIRE CENTERS OF  
MONTANA, INC., LES SCHWAB TIRE  
CENTERS OF NEVADA, INC., LES  
SCHWAB TIRE CENTERS OF UTAH,  
INC.,

Defendants.

No. C06-0045 RSM

DEFENDANT'S ANSWER TO THE  
EEOC'S FIRST AMENDED COMPLAINT

DEFENDANT'S ANSWER TO THE EEOC'S  
FIRST AMENDED COMPLAINT (NO. C06-0045  
RSM) – 1

41826-6002/LEGAL13069759.1

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## I. ANSWER

Defendants, Les Schwab Tire Centers of Washington, Inc., Les Schwab Warehouse Center, Inc., Les Schwab Tire Centers of Boise, Inc., Les Schwab Tire Centers of California, Inc., Les Schwab Tire Centers of Idaho, Inc., Les Schwab Tire Centers of Montana, Inc., Les Schwab Tire Centers of Nevada, Inc., and Les Schwab Tire Centers of Utah, Inc. (“Defendants”) answer the Plaintiff Equal Employment Opportunity Commission’s (“EEOC”) First Amended Complaint (the “Amended Complaint”) as follows:

The unnumbered preamble to the Amended Complaint does not state specific facts or allegations to which an answer is required. To the extent an answer is required, Defendants admit that this purports to be an action under Title VII of the Civil Rights Act of 1964 (“Title VII”) and Title I of the Civil Rights Act of 1991, and that the EEOC makes various allegations in the Amended Complaint. Except as expressly admitted, Defendants deny the allegations in the preamble, and they specifically deny that they engaged in unlawful employment practices or discrimination on the basis of sex and that Magen Morris, Jennifer Strange or any other individuals are entitled to any relief.

1. Defendants admit that the EEOC has invoked the jurisdiction of this Court pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. Except as expressly admitted, the allegations of this paragraph are denied.

2. Defendants admit that the alleged practices are alleged to have occurred within the jurisdiction of the United States District Court for the Western District of Washington, but deny that any unlawful employment practices occurred.

3. Defendants admit that EEOC is an agency of the United States charged with administration, interpretation and enforcement of Title VII. Except as expressly admitted, the allegations of this paragraph are denied.

4. This paragraph states a legal conclusion and is therefore denied.

1           5.       Defendants admit that, at all relevant times, they have been corporations with at  
2       least 15 employees and that each of them has done business in a state listed in this paragraph..  
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4       Except as expressly admitted, defendants deny the allegations of the paragraph.  
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6           6.       Defendants admit that, more than 30 days prior to the commencement of this  
7       lawsuit, Ms. Morris and Ms. Strange filed charges of discrimination with the EEOC alleging  
8       violations of Title VII by "Les Schwab Tire Centers." Except as expressly admitted, the  
9       allegations of the paragraph are denied.  
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11           7.       The allegations in this paragraph are denied.  
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13           8.       The allegations in this paragraph are denied.  
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15           9.       The allegations in this paragraph are denied.  
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17           10.      The allegations in this paragraph are denied.  
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19           11.      Defendants deny that EEOC, Morris, Strange, or any other individuals are entitled  
20       to the relief requested in the unnumbered Prayer for Relief or to any other relief and deny any  
21       remaining allegations in the Prayer for Relief.  
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23           12.      Any allegations not expressly admitted herein are denied.  
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## 25                           **II.       DEFENSES AND AFFIRMATIVE DEFENSES**

26           By way of further response, Defendants state the following defenses and affirmative  
27       defenses:  
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29           1.       EEOC has failed to state a claim upon which relief can be granted.  
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31           2.       EEOC has failed to identify a pattern or practice of unlawful discrimination  
32       against any individuals.  
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34           3.       Any employment practices at issue in the Amended Complaint were based upon  
35       legitimate, non-discriminatory factors other than gender.  
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4. Defendants deny that gender or any other impermissible factor played any role in any employment decision made pursuant to any policy or procedure EEOC is or may be challenging.

5. EEOC's claims are barred to the extent that the alleged unlawful actions of Defendants' agents, employees, and representatives, if they occurred, were not actions taken within the course and scope of their employment.

6. Morris, Strange and any other individual EEOC alleges was treated unlawfully by Defendants have failed to comply with their duty to mitigate alleged losses, their entitlement to recovery for which is expressly denied; alternatively, any claim for relief must be set off and/or reduced by wages, compensation, pay, and benefits, or other earnings or remunerations, profits, and benefits received by plaintiffs.

7. In the event that the Court or a jury should ever conclude that gender was a motivating factor in any of the employment decisions challenged by EEOC, which Defendants expressly deny, Defendants affirmatively aver that the same decision(s) would have been made absent consideration of any impermissible factor(s).

8. EEOC's claims or some of them are barred by applicable statutes of limitation and time requirements set forth in Title VII, by the doctrine of laches, and/or because they were not included in the charges of discrimination.

9. EEOC's claims are barred by the doctrine of estoppel and waiver.

10. EEOC's claims are barred by its failure to fully and fairly investigate the underlying charges of discrimination and its failure to attempt to conciliate in good faith, including, without limitation, by its refusal to engage in negotiation, via mediation or otherwise, during the conciliation process. Said failures also deprive the Court of subject matter jurisdiction.

WHEREFORE, having fully answered the Amended Complaint, Defendants respectfully request that:

- 1           1.     The Amended Complaint be dismissed with prejudice;
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- 3           2.     Defendants be awarded the costs, disbursements and attorneys' fees they incur
- 4     herein;
- 5
- 6           3.     Defendants be granted permission to amend the Answer to conform with the
- 7     proof; and
- 8
- 9           4.     Defendants be granted such other relief as this Court deems just and equitable.
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13     DATED: March 2, 2007

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26  
27     DATED: March 2, 2007

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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that, on March 2, 2007, he caused to be served on the person(s) listed below in the manner shown:

DEFENDANT'S ANSWER TO THE EEOC'S FIRST AMENDED COMPLAINT

☐ United States Mail, First Class

☐ By Messenger

☐ By Facsimile

☒ By eFiling

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*Attorneys for Plaintiff EEOC*

Dated at Seattle, Washington, this 2nd day of March, 2007.

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Steven Herchelrode  
Legal Secretary